

INITIAL STATEMENT OF REASONS

RN 04-04

POSTPONEMENTS, CONTINUANCES, AND STIPULATIONS OF UNSUITABILITY

The Board of Prison Terms (Board) proposes to amend California Code of Regulations (CCR), title 15, section (§) 2253. The amendments will expand the current method in which prisoners and parolees may request a delay in their scheduled hearing dates.

The Board determined that this regulatory action, by providing procedures and opportunities for more continuances would accommodate prisoners and parolees who desire a delay in their hearings. Rescheduling such hearings to a later date would free resources and create more efficient scheduling of hearings. The expansion would include, in addition to continuances, postponements and stipulations of unsuitability. These additional methods of delaying hearings would impose procedures and timeframes for requests made before the hearing (postponements) and those made during the hearing (continuances). The process of stipulations of unsuitability for parole of life prisoners is also being codified.

While the procedures for continuances will apply to all Board hearings, postponements and stipulations will apply only to life prisoner parole consideration hearings. These additional methods of delaying hearings will expand and clarify options available to prisoners and parolees. In addition, it will streamline the hearing process by reducing hearings scheduled for times when the inmate or parolee desire a later time, and which may become unnecessary due to pending judicial proceedings. Such methods will eliminate multiple or unnecessary hearings, thus utilizing scarce resources in the most efficient manner. Fairness requires that the Board hold timely hearings for all inmates and parolees that desire that constitutional right. Fairness also requires that any right offered inmates and parolees in one type of hearing also be available to those facing other types of Board hearings, to the extent such is compatible with the nature of the proceedings and external constraints.

Specific amendments are as follows:

Language defining the current “continuance” process has been deleted and new language adopted to define the process for providing delays in Board hearings for good cause.

CCR § 2253(a) clarifies the need for occasional postponements or continuances of hearings. Allowing such delays will avoid the inconvenience and costs which occur when hearings are continued or postponed at or near the time when they are scheduled.

CCR § 2253(b) defines the postponement process at life prisoner hearings. A life prisoner may request a *postponement* of their hearing at the earliest possible date that he or she becomes aware of the need for a postponement. A timely request (made within 10 days of the hearing) shall be considered by the Department of Corrections (Department) unless the Board notifies the Department of its need to consider the request. If the request is approved, staff will reschedule the postponed case at the earliest date consistent with the request, the availability of the hearing panel, and the need to provide appropriate notice to affected parties. A request submitted less than 10 working days prior to the scheduled hearing will be considered by the Board. Such request shall be presumed to be invalid unless the reasons given were not known prior the scheduled hearing. If the postponement is approved, the hearing will be rescheduled at the convenience of the Board, but not later than two years. Specific circumstances may result in the postponed hearing being held at other appropriate times.

CCR section 2253(c) describes the *continuance* process which would be a request to continue the hearing due to circumstances which were unknown prior to the commencement of the hearing. In considering a request for continuance, the Board shall weigh the reasons for the request, the need for the continuance, and any inconvenience to the participating parties. If the Board grants the request, it will attempt to impanel the same members when the hearing is reconvened. However, the Board may, in its discretion, elect a new panel and commence a new hearing.

CCR section 2253(d) defines the process of life prisoners *stipulating to unsuitability* for parole at or before their hearing. Offers to stipulate to unsuitability are to be submitted in writing, stating the reasons that support unsuitability and the suggested period until the next hearing. Such offers will be decided by the Board as early as possible. If the offer to stipulate is submitted within 10 days of the hearing, reasonable efforts will be made to determine if it should be accepted in sufficient time to vacate the scheduled hearing and notify affected parties. If the hearing cannot be vacated within sufficient time, the offer to stipulate will be considered at the time of hearing. Representatives from the District Attorney's Office and victim or victim's next of kin present at the hearing will be notified and given an opportunity to comment on the offer to stipulate to unsuitability.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did not rely on any technical, theoretical, or empirical studies in consideration of the proposed action.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY

The Board has determined that no reasonable alternatives considered would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

***ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD
LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS***

The Board has not identified any alternatives that would lessen any adverse impact on small businesses. However, no adverse impacts on small businesses are anticipated, given the subject area of this action.